**UNITED NATIONS** **A**

**General Assembly**

Distr.
GENERAL

A/CONF.189/PC.2/24
22 March 2001

ENGLISH ONLY*

WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

Preparatory Committee
Second session
Geneva, 21 May-1 June 2001
Item 6 of the provisional agenda

# REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

## Contribution of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

1. In Commission on Human Rights resolution 2000/38 (para. 13 (g)), the Special Rapporteur on freedom of opinion and expression was invited to "contribute effectively to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance by transmitting to the High Commissioner his recommendations on freedom of opinion and expression which have a bearing on the World Conference".

---

* This document is being issued in the original language only.

2. In this context, the Special Rapporteur would first recall international legal standards which he feels are relevant to both the right to freedom of opinion and expression and the fight against racism and related intolerance, in particular:

(a) The right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR) which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

(b) The principle of non-discrimination, stipulating that everyone is entitled to all rights and freedoms set forth in international instruments without distinction of any kind, such as race, colour, language, religion and national origin, as recognized by article 2 of UDHR, article 2, paragraph 1 of ICCPR; article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

3. The Special Rapporteur also acknowledges that:

(a) The right to freedom of expression, which includes freedom to seek, receive and impart information and ideas, may be subject to certain restrictions such as "respect of the rights or reputations of others" (ICCPR, art. 19, para. 3 (a));

(b) That "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law" (ICCPR, art. 20, para. 2);

(c) In the exercise of one's rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others (UDHR, art. 29, para. 2);

(d) The rights and freedoms set forth by the UDHR may in no case be exercised contrary to the purposes and principles of the United Nations (UDHR, para. 3);

(e) "Any right to engage in any activity ... aimed at the destruction of any of the rights and freedoms" set forth in the ICCPR should be prohibited (ICCPR, art. 5);

(f) Article 4 of ICERD condemns attempts to justify or promote racial hatred and discrimination in any form, requires the adoption of immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and stipulates that States parties "shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities ...." (ICERD, para. 4 (a)).

4. In light of these principles, the Special Rapporteur would like to address a few key points which he considers of importance in the context of both his mandate and the objectives of the World Conference.

## I. THE POSITIVE CONTRIBUTION OF THE EXERCISE OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION TO THE FIGHT AGAINST RACISM, DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

5. The exercise of the right to freedom of opinion and expression, particularly by the media, and the full respect for the right to freedom of information contribute extensively to the fight against racism, discrimination, xenophobia and related intolerance, the free flow of information and ideas being one of the most powerful ways of combating these phenomena.

6. The Special Rapporteur recognizes:

(a) That the free flow of information and ideas is essential to inform the public, generate debate on important and controversial issues such as racism and related intolerance, and increase awareness about racism and its consequences;

(b) That the free flow of information and ideas also allows for the voices of the most disadvantaged in society and those whose rights have been violated to be heard. Persecuted minorities, vulnerable children, oppressed women, and silenced racial or ethnic groups can be empowered through the dissemination of information concerning them and their experience;

(c) That the media can provide unique opportunities to challenge perceptions and prejudices, to educate about different cultures and to correct distorted images about groups and history. In this sense, the media have an important role to play in building confidence between different racial and ethnic groups by reporting on issues concerning tolerance among various national, ethnic, religious and linguistic groups, as well as on various cultural experiences and identities;

(d) That the unhindered exercise of the right to freedom of expression, in particular by the media, constitutes an important tool for the promotion and protection of human rights more generally by facilitating the building of a culture of human rights and by allowing for human rights violations to be exposed, wherever and whenever they occur.

7. Consequently, the Special Rapporteur would make the following recommendations:

(a) Governments should guarantee free access to information which exposes or otherwise helps to combat these problems, whether that information is held by public or private bodies (unless denial of access can be justified as being necessary to protect an overriding public interest);

(b) Governments should ensure that the public has adequate access to reliable information relating to racism, discrimination, xenophobia and intolerance including, where necessary, through the collection and dissemination of such information by public authorities.

## II. "HATE SPEECH" - AN AREA OF CONFLICT BETWEEN THE RIGHT TO FREEDOM OF EXPRESSION AND THE PRINCIPLE OF NON-DISCRIMINATION

8. The Special Rapporteur is of the view that the right to freedom of expression should remain unabridged. However, he acknowledges that in some circumstances, and in particular when freedom of speech leads to the incitement of hatred and/or discrimination, this right conflicts with the rights of others.

9. In this connection, the Special Rapporteur recognizes that "hate speech", or the advocacy of national, racial, religious or other hatred, constitutes an area which commands due and proper attention. The Special Rapporteur is aware of, and concerned by, the potential harm, whether psychological or physical, which can result from hate speech, in particular incitement to violence, heightened tensions between groups of different cultural, ethnic, racial and religious identities, and the perpetuation of stereotypes.

10. In light of these concerns, the Special Rapporteur recognizes that hate speech calls for reasonable restrictions which are necessary to prevent incitement to acts of imminent violence, hatred or discrimination on grounds, among others, of race, religion, colour, descent, or ethnic or national origin. As such, and in accordance with the above-mentioned international standards, the Special Rapporteur wishes to condemn any advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence; such advocacy should be prohibited by law.

11. At the same time, the Special Rapporteur expresses concern about the possibility of such prohibitions being abused, particularly where respect for human rights and the rule of law is weak and hate speech laws have been used in the past against those they were intended to protect.

12. The Special Rapporteur wishes to emphasize that great care must be taken to achieve an appropriate balance between the rights to freedom of opinion and expression and to receive and impart information and the prohibition on speech and/or activities promoting racist views and inciting violence. In this regard, the Special Rapporteur would recommend that:

(a) Hate speech laws should, at a minimum, conform to the following:

(i) No one should be penalized for statements which are true;

(ii) No one should be penalized for the dissemination of hate speech unless it has been shown that the perpetrator had the intention to incite discrimination, hostility or violence;

(iii) The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;

(iv) No one should be subject to prior censorship;

(v) Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality;

(b) Any civil, criminal or administrative law/measure that constitutes an interference with the freedom of expression must be clearly and narrowly defined, use terms which have been authoritatively interpreted by independent bodies, be applied by a body which is independent and in a manner which is neither arbitrary nor discriminatory, and be subject to adequate safeguards against abuse;

(c) The Special Rapporteur encourages Governments to adopt a balanced approach by imparting information that is both accurate and relevant to the public, and to strive to promote tolerance.

## III. THE INTERNET

13. The Special Rapporteur considers the Internet to be an increasingly important human rights education tool which contributes to a broader awareness of international human rights standards, provisions and principles. He is of the view that "the new technologies and, in particular, the Internet are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process" (E/CN.4/1998/40, para. 45).

14. The Special Rapporteur would like to stress the significant contribution that the use of new technologies such as the Internet can make in the fight against racism. The global reach and relative ease of use of the Internet make it a unique and highly effective tool for the promotion of human rights, enabling an unprecedented audience previously unfamiliar with human rights education to gain access to valuable information. It can be used to disseminate positive information and materials, research and facts about immigration and minorities which can in turn support action against racism and discrimination, raise awareness, promote understanding and increase tolerance.

15. At the same time, the Special Rapporteur recognizes the legitimacy of concerns about dissemination on the Internet of racist and xenophobic material, such as hate speech, which constitutes a contemporary form of racism. He is aware that the features that make the Internet an asset to democracy and the realization of human rights also render it a powerful tool for the spread of hateful messages and propaganda, and that the Internet makes hate speech available to those who would never before have come into contact with it. In other words, he acknowledges that although "racist material represents only a small percentage of the volume of information on the Internet and that racists in cyberspace are comparatively few and far between, the Internet does act as a 'force-multiplier, enhancing power and enabling racists' to have influence in excess of their true numbers. The Internet allows racists to cross national boundaries and bypass laws banning hate material by moving sites abroad" (A/CONF.189/PC.1/5).

16. In light of these considerations, the Special Rapporteur condemns the abuse of the Internet by some groups and/or persons to promote racist and hate speech in violation of international law, or the use of the Internet as a platform for any kind of speech which exceeds the threshold of tolerance.

17. However, the Special Rapporteur believes that the dangers posed by such materials on the Internet can be adequately addressed through the judicious application of existing international standards and national laws consistent with international standards governing freedom of opinion and expression and the right to seek, receive and impart information. He considers that on-line expression should be guided by international standards and be guaranteed the same protection as is awarded to other forms of expression.

18. In this regard, his recommendations are as follows:

(a) Governments should be encouraged to view the Internet and other information technologies as means to encourage a plurality of voices and to take steps aimed at integrating those views in the development process;

(b) All reasonable steps should be taken to promote access to the Internet. The general rule should be the protection of the freedom of expression and opinion and the right to information and the restriction of these rights should be the exception;

(c) Governments should prevent, to the fullest extent possible, the excessive imposition of regulations on the use of the Internet, especially if they are based on broadly worded and vague justifications. Extremely harsh punitive measures by Governments against groups and individuals seeking to benefit from new information technologies should be eliminated;

(d) Governments should be encouraged to use the Internet as a tool for education against racism and for tolerance.

19. Finally, the Special Rapporteur would like to draw attention to the statement on racism and the media adopted jointly with the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe and the Special Rapporteur on Freedom of Expression of the Organization of American States (see annex). This statement contains important recommendations which complement those above. The Special Rapporteur hopes that his recommendations will be taken into account by the World Conference.

# ANNEX

## International mechanisms for promoting freedom of expression: Joint statement on racism and the media by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

In support of the objectives and with the desire to make a contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

Reaffirm that the promotion of equality and freedom from racism, discrimination, xenophobia and intolerance are essential to the realization of human rights and freedoms;

Stress the fundamental importance of the right to freedom of expression, including of the media, for the personal development, dignity and fulfilment of every individual, for the promotion and protection of equality and democracy, for the enjoyment of other human rights and freedoms, and for the progress and welfare of society;

Note with concern the prevalence of racism and discrimination, as well as the existence in many countries and regions of the world of a climate of intolerance, and the threat these pose to equality and full enjoyment of human rights and freedoms;

Recognize the positive contribution the exercise of the right to freedom of expression, particularly by the media, and full respect for the right to freedom of information can make to the fight against racism, discrimination, xenophobia and intolerance;

Recognize as harmful all forms of expression which incite or otherwise promote racial hatred, discrimination, xenophobia and intolerance and note that crimes against humanity are often accompanied or preceded by these forms of expression;

Are cognizant of the need to ensure a balance between efforts to combat racism, discrimination, xenophobia and intolerance and protection of the right to freedom of expression;

Reiterate the need to respect the editorial independence and autonomy of the media;

Desire to make a contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;

**Adopt the following joint statement:**

Promoting an optimal role for the media in the fight against racism, discrimination, xenophobia and intolerance requires a comprehensive approach which includes an appropriate civil, criminal and administrative law framework, and which promotes tolerance, including through education, self-regulation and other positive measures.

These efforts must be taken with the realization that respect for freedom of expression and information ensures that all citizens have access to information which helps them form their opinions and challenges their views, and which they need to make decisions.

**Civil, criminal and administrative law/measure**

Any civil, criminal or administrative measures that constitute an interference with freedom of expression must be provided by law, serve a legitimate aim as set out in international law and be necessary to achieve that aim. This implies that any such measures are clearly and narrowly defined, are applied by a body which is independent of political, commercial or other unwarranted influences and in a manner which is neither arbitrary nor discriminatory, and are subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal. If these safeguards are not in effect, there is a very real possibility of such measures being abused, particularly where respect for human rights and democracy is weak and hate speech laws have been used in the past against those they should be protecting.

In accordance with international and regional law, hate speech laws should, at a minimum, conform to the following:

No one should be penalized for statements which are true;

No one should be penalized for the dissemination of hate speech unless it has been shown that he/she did so with the intention of inciting discrimination, hostility or violence;

The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;

No one should be subject to prior censorship; and

Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

These standards should also apply to new communications technologies such as the Internet, which are of enormous value in promoting the right to freedom of expression and the free flow of information and ideas, particularly across frontiers and at the global level. Any restrictions on these new communications technologies should not:

Limit or restrict the free flow of information and ideas protected by the right to freedom of expression; or

Enable the authorities to interfere with the work of, or to intimidate, human rights defenders.

Defamation laws have in some cases been used to limit the right to freely identify and openly combat racism, discrimination, xenophobia and intolerance. To prevent this from happening, defamation laws should be brought into line with international standards on freedom of expression, in particular as outlined in our Joint Declaration of 30 November 2000.

**Freedom of information**

The free flow of information and ideas is one of the most powerful ways of combating racism, discrimination, xenophobia and intolerance. There should be free access to information which exposes or otherwise helps to combat these problems, whether that information is held by public or private bodies, unless denial of access can be justified as being necessary to protect an overriding public interest. In addition, States should ensure that the public has adequate access to reliable information relating to racism, discrimination, xenophobia and intolerance including, where necessary, through the collection and dissemination of such information by public authorities.

**Promoting tolerance**

Media organizations, media enterprises and media workers - particularly public service broadcasters - have a moral and social obligation to make a positive contribution to the fight against racism, discrimination, xenophobia and intolerance. There are many ways in which these bodies and individuals can make such a contribution, including by:

Designing and delivering media training programmes which promote a better understanding of issues relating to racism and discrimination and which foster a sense of the moral and social obligations of the media to promote tolerance and knowledge of the practical means by which this may be done;

Ensuring that effective ethical and self-regulatory codes of conduct prohibit the use of racist terms and prejudicial or derogatory stereotypes and unnecessary references to race, religion and related attributes;

Taking measures to ensure that their workforce is diverse and reasonably representative of society as a whole;

Taking care to report factually and in a sensitive manner on acts of racism or discrimination, while at the same time ensuring that they are brought to the attention of the public;

Ensuring that reporting in relation to specific communities promotes a better understanding of difference and at the same time reflects the perspectives of those communities and gives members of those communities a chance to be heard; and

Promoting a culture of tolerance and a better understanding of the evils of racism and discrimination.

---